

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARNELL HODGES,

Defendant.

2:98-CR-169-RCJ

ORDER

Currently before the Court is Defendant Darnell Hodges's Rule 35 Motion for Correction of Sentence (#94).

BACKGROUND

In January 2000, a jury found Defendant guilty of being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). (See Judgment (#93) at 1). That same month, Judge Johnnie Rawlinson sentenced Defendant to 240-months' imprisonment with credit for time served. (*Id.* at 2). The time imposed in that case was to run concurrently with the time imposed in the Nevada Eighth Judicial Court Case C150167. (*Id.*).

DISCUSSION

In January 2011, Defendant filed a Rule 35(a) Motion for Correction of Sentence. (Mot. for Correction (#94) at 1). Defendant asserts that the Bureau of Prisons ("BOP") has miscalculated his jail credits. (*Id.*). Specifically, he argues that he should have jail credit from March 29, 1998 through his federal sentencing on January 24, 2000. (*Id.*). Based on his calculation, he should have 674 days of jail credit instead of the 358 days that the BOP has calculated. (*Id.*). Defendant requests that the Court amend or correct his judgment in this

1 case to reflect 674 days of jail credit. (*Id.* at 2).

2 The government did not file a response.

3 Pursuant to Fed. R. Crim. P. 35(a), a “court may correct a sentence that resulted from
4 arithmetical, technical, or other clear error” within 14 days of sentencing. Fed. R. Crim.
5 P. 35(a). In this case, the Court denies this motion as untimely. Defendant filed this motion
6 eleven years after sentencing.

7 Moreover, the Court notes that it previously addressed Defendant’s request for
8 additional jail credit in a prior order. (See Order (#92) at 2-3). In that order, this Court found
9 that Defendant’s jail credit computation revealed the following:

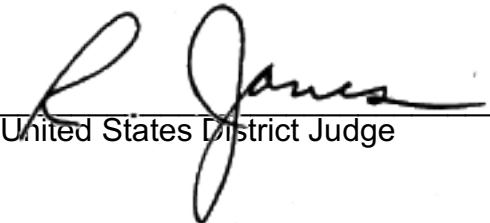
10 (1) Defendant was awarded presentence credit on his federal sentence for the
11 period beginning with his arrest on March 29, 1998 through March 21, 1999 (358
12 days), and (2) his federal presentence credit stopped upon his March 22, 1999
13 state sentencing in accordance with 18 U.S.C. § 3585(b) which provides prior
14 custody credit for all time “that has not been credited against another sentence.”
15 Under the statutory provisions of 18 U.S.C. § 3585(b), he is not entitled to
16 federal credit for his state sentence time. Although he was transferred to federal
custody, the transfer was by a writ of habeas corpus ad prosequendum and
therefore the state maintained “primary jurisdiction” over him. See *Taylor v.*
Reno, 164 F.3d 440, 444-45 & n.1 (9th Cir. 1998), *cert denied*, 119 S.Ct. 2377
(1999). Defendant’s sentence credit began on January 24, 2000 when he was
sentenced and he has received sentence credit on his federal sentence since
that date.

17 (*Id.* at 3).

18 **CONCLUSION**

19 For the foregoing reasons, IT IS ORDERED that Defendant’s Rule 35 Motion for
20 Correction of Sentence (#94) is DENIED.

21
22 DATED: This 31st day of January, 2012.

23
24 
25 United States District Judge
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